

Supreme Court of the United States

OCTOBER TERM, 1948

No. 292

GEORGE SMITH,

*Petitioner,*

—against—

UNITED STATES OF AMERICA,

*Respondent.*

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REPLY BRIEF ON BEHALF OF  
GEORGE SMITH, PETITIONER HEREIN

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We feel that we have adequately and fully stated the contentions of George Smith, Petitioner herein, in his petition in support of the writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

We do not intend to repeat any part of the contentions raised in such petition except to direct this Honorable Court's attention to an inaccuracy appearing in the Government's brief in opposition thereto appearing at bottom of page 15 thereof and which reads as follows:

“It should not be overlooked, moreover, that even in the absence of an immunity statute, a witness might deem it to be to his advantage to volunteer exculpatory information in order to avoid any adverse inference that might be drawn from his silence. When exculpatory information is given under the Compulsory Testimony Act, the determination whether the witness gave his testimony voluntarily is a question of fact for the court. In the instant case there was sufficient evi-

dence to support the inference of the two lower courts that Smith did not intend to claim immunity on account of his self-exonerating statement."

We do not quarrel with the Government in its asserted position, that the issues as to the alleged voluntary nature of the statement given by George Smith before the Official of the Office of Price Administration was one of fact.

The Trial Court determined without qualification that the testimony given by George Smith was in all respects involuntary and should be excluded from the evidence as against him. The assertion by the Government in its Reply Brief as earlier quoted that "there was sufficient evidence to support the inference of the *two lower courts* that Smith did not intend to claim immunity on account of his self-exoneration statement" is therefore demonstrably inexact.

In this connection, the Court stated:

"That was the statement of the examiner and I will resolve that question in favor of the defendant, George Smith, and I will exclude the entire statement as to the defendant, George Smith, including that one answer." (Referring to the testimony given by your petitioner before the Official of the Office of Price Administration, f. 2563.)

All of the foregoing has been carefully pointed out by George Smith in his petition in support of the Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit, at pages 17 (bottom), 18, and 19, to which we again respectfully direct this Court's attention.

All of the foregoing respectfully submitted,

JULIAN C. TEPPER,  
Attorney for Petitioner